

GMSX LLC dba Gelateria Naia
736 Alfred Nobel Drive
Hercules, CA 94547

August 21, 2008

RECEIVED

AUG 25 2008

Dr. Stephen Beam, Chief
Milk and Dairy Food Safety Branch
Department of Food and Agriculture
1220 N Street, Room A-170
Sacramento, California 95814

MILK & DAIRY FOOD SAFETY BRANCH

Dear Dr. Beam:

Re: Petition for Temporary Standard for "Gelato"

Thank you for your response dated June 30, 2008 with regards to our petition for a temporary standard for "gelato".

Please find our revised petition below to place it in condition to be considered as a temporary standard. In particular, please note our response to each of your points:

Proposed microbial standards were not specified.

In proposed subsection (a) (1), proposed microbial standards are specified as: "Gelato shall contain not more than 75,000 bacteria per gram." This is meant to match existing standards for ice cream as stated under the California Food and Agricultural Code (FAC) Section 36861.

A proposed label was not submitted for the product(s).

The petition now submits label (A) for a "gelato" mix and label (B) for a "gelato" product.

Please consider the petition for a temporary standard.

Proposed subsection (b) lists "dry skim milk" and "nonfat dry milk" which are the same ingredient, yet does not include condensed skim milk which is allowed under the Code of Federal Regulations as an acceptable form of skim milk; then later refers to the titratable acidity of "concentrated sweet cream buttermilk" which is not listed as an optional dairy ingredient.

The proposed subsection (b) has been revised to address the concern.

Proposed subsection (c) lists ingredients that may not be added to the product, which is

unusual in a product standard and would be cumbersome to maintain over time as new ingredients come onto the marketplace;

The proposed subsection (c) has been revised to list ingredient groups (e.g. “synthetic sweeteners”) rather than specific ingredients (e.g. “synthetic sweeteners (E420-E421, E950-E967)). While potentially cumbersome, this proposed subsection distinguishes “gelato” as proposed from other products in the marketplace marketed as, for example, “low-fat frozen yogurt”.

Proposed subsections (e) and (f) are not necessary as the California Food and Agricultural Code (FAC) and California Code of Regulations address labeling and analytical methods.

Most of the proposed subsections (e) and (f) have been removed.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Chris Tan", with a stylized flourish at the end.

GMSX LLC dba Gelateria Naia by
Chris Tan

attachment: Revised proposed standard for “gelato”.

Petition for Temporary Standard for “Gelato”: 2008-08-21

We are submitting this petition to request you to issue a temporary standard for the food and term “gelato”. This request is submitted to the California Department of Food and Agriculture under section 36632 of the California Food and Agriculture Code 36632.

Gelateria Naia is a small business, originally from Berkeley, that since 2002 has made and sold gelato. Gelato is a healthy, delicious and convenient “Slow Food” that uses sustainable production techniques, and all-natural wholesome ingredients. Over six years we have seen plenty of confusion over the definition and standard on gelato, both from our guests, and from California Department of Food and Agriculture inspectors and administrators.

ACTION REQUESTED

This petition respectfully requests that you accommodate this safe and wholesome milk product and issue a temporary standard for “gelato”.

This petition includes a proposed definition, standard, nomenclature, and label for “gelato” as follows, in reference to the attached document:

- **Definition.** The proposed definition for “gelato” is given in paragraphs (a) through (d).
- **Standard.** The proposed standard for “gelato” is given in paragraphs (a) through (d).
- **Nomenclature.** The proposed nomenclature for “gelato” is given in paragraph (e).
- **Label.** The proposed label for “gelato” is attached both in mix form (A) and product form (B).

This petition also addresses the relation between “gelato” and existing definitions and standards established for a comparable product, “ice cream”. The proposed standard for “gelato” is based on the standard for “ice cream”, pursuant to the California Food and Agriculture Code 36861, including with the following main distinctions:

- **Milkfat.** The proposed milkfat of “gelato” differs from “ice cream.” As stated in paragraph (a) (2), “gelato contains between 4 percent milkfat and 7 percent milkfat, inclusive.” In contrast, “ice cream contains not less than 10 percent milkfat.”
- **Total Solids.** The proposed total solids of “gelato” differs from “ice cream.” As stated in paragraph (a) (2), “gelato contains not less than 2.3 pounds of total solids to the gallon.” In contrast, “ice cream contains not less than 1.6 pounds of total

solids to the gallon.”

- **Overrun.** The proposed weight of “gelato” differs from “ice cream.” As stated in paragraph (a) (2), “gelato weighs not less than 6.4 pounds to the gallon.” In contrast, “ice cream weighs not less than 4.5 pounds to the gallon.”
- **Egg.** In contrast to “ice cream”, “gelato” has no regulations on the percentage of egg in the finished food.
- **Milk.** The proposed milk for “gelato” differs from “ice cream.” As stated in paragraph (a) (3) (b), the milk for “gelato” may include cow’s milk, goat’s milk, sheep’s milk, or the milk from any mammal. In contrast, the milk for “ice cream” is cow’s milk.
- **Synthetic Ingredients.** The proposed ingredients of “gelato” differ from “ice cream”. As stated in paragraph (a)(1), “gelato” ingredients must exclude any synthetic ingredients as defined in paragraph (c) or artificial flavoring ingredients. In contrast, “ice cream” may include artificial flavoring ingredients, pursuant to declaration and labeling requirements set forth in Section 135.110 (f) of Title 21 of the Code of Federal Regulations. “Gelato” also excludes some optional dairy ingredients, caseinates, and hydrolyzed milk proteins.
- **Nomenclature and Label Declaration.** As “gelato” excludes any synthetic ingredient or artificial flavoring ingredients, the nomenclature and label declaration are simplified in comparison to “ice cream”.

We look forward to your response to our petition for a temporary standard for “gelato”.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris Tan', with a stylized flourish at the end.

GMSX LLC dba Gelateria Naia by
Chris Tan

attachment: Proposed standard for “gelato” and labels for “gelato”.

Gelato.

(a) Description.

(1) Gelato is a food produced by freezing, while stirring, a pasteurized mix consisting of one or more of the optional dairy ingredients specified in paragraph (b) of this section, and other safe and suitable nonmilk-derived ingredients; excluding any synthetic ingredients specified in paragraph (c) of this section and excluding other food fats, except such as are natural components of flavoring ingredients used or are added in incidental amounts to accomplish specific functions. Gelato is sweetened with safe and suitable sweeteners, may be characterized by the addition of natural flavoring ingredients and excludes the addition of any artificial flavoring ingredients. Gelato shall contain not more than 75,000 bacteria per gram.

(2) Gelato contains not less than 2.3 pounds of total solids to the gallon, and weighs not less than 6.4 pounds to the gallon. Gelato contains between 4 percent milkfat and 7 percent milkfat, inclusive. Gelato contains not less than 10 percent nonfat milk solids.

(3) When calculating the minimum amount of milkfat and nonfat milk solids required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4.

(b) Optional dairy ingredients. The optional dairy ingredients referred to in paragraph (a) of this section are: Cream; dry cream; milk; concentrated milk; evaporated milk; sweetened condensed milk; dry milk; skim milk; concentrated skim milk; evaporated skim milk; condensed skim milk; sweetened condensed skim milk; sweetened condensed part-skim milk; dry skim milk; sweet cream buttermilk; condensed sweet cream buttermilk; and dry sweet cream buttermilk. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dry sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid. The term "milk" as used in this section means cow's milk, goat's milk, sheep's milk, or milk from any mammal.

(c) Synthetic ingredients. The synthetic ingredients referred to in paragraph (a) of this section that may not be added to gelato comprise:

artificial or synthetic flavors;

synthetic sweeteners, including aspartame (E951), sucralose (E955), sorbitol (E420), mannitol (E421), acesulfame K (E950), saccharin and its Na, K and Ca salts (E954), maltitol or maltitol syrup (E965), lactitol (E966), and xylitol (E967);

modified celluloses, including carboxy methyl cellulose ("CMC") or sodium carboxy methyl cellulose (E466), cellulose gel, and cellulose gum;

mono- and di-glycerides and their esters and esters of fatty acids, including mono and di-glycerides of fatty acids (E471); polysorbates, including polysorbate 80 (E433), polysorbate 65 (E436), and polysorbate 60 (E435); sorbitan esters; bleached lecithin; modified alginates; steroyl lacylates; synthetic flavor enhancers, including inosinates (E630-E633), guanylates (E626-E629), and glutamates (E620-E625); synthetic colors, including FD&C Blue 1 (E133), FD&C Blue 2 (E132), FD&C Green 3 (E143), FD&C Red 40 (E129), FD&C Red 3 (E127), FD&C Yellow 5 (E102), FD&C Yellow 6 (E110), cochineal or carmine (E120), caramel coloring classes II, III and IV (E150c, E150d), beta-apo-8'-carotenal (E160e), and paprika oleoresin (E160c); and synthetic preservatives, including benzoates (E210-E213), BHA/BHT (E320-E321), EDTA (E385), nitrates/nitrites (E250, E251), propionates (E280-E283), propyl gallate (E310), sorbates (E200-E203), sulfites (E220-E226), and TBHQ (E319).

(d) Methods of analysis. The fat content shall be determined by the method prescribed in ``Official Methods of Analysis of the Association of Official Analytical Chemists,`` 13th Ed. (1980), sections 16.287 and 16.059, under ``Fat, Roese-Gottlieb Method--Official Final Action,`` which is incorporated by reference. Copies may be obtained from the AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877, or may be examined at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal--register/code--of--federal--regulations/ibr--locations.html>.

(e) Nomenclature.

(1) The name of the food is ``gelato``.

Proposed Gelato Label (A): Gelato Mix

Gelato Mix
2.5 Gallons

DISTRIBUTED BY:

FRESH DAIRY

SPRINGFIELD, CA 94500

MANUFACTURED AT PLANT XX-YYY

ON

AUGUST 13, 2008

Proposed Gelato Label (B): Gelato Product

Brand: Gelateria Naia
Item: Madagascar Vanilla Gelato
Product Code: MVAN-G

Ingredients: Milk, Sugar, Cream, Eggs, Vanilla, Carob Seed Flour.

Allergens: Dairy products, Eggs.

Manufactured at Plant: 06-396

| Nutrition Facts | | | |
|--|-------|-------------------|-----|
| Serving Size: | | 119 g | |
| Servings Per Container About 4 | | | |
| Amount Per Serving | | | |
| Calories | 145 | Calories from Fat | 48 |
| % Daily Values* | | | |
| Total Fat | 6 g | | 10% |
| Saturated Fat | 4 g | | 20% |
| Trans Fat | 0 g | | |
| Cholesterol | 35 mg | | 11% |
| Sodium | 80 mg | | 3% |
| Total Carbohydrate | 27 g | | 9% |
| Dietary Fiber | 0 g | | 0% |
| Sugars | 15 g | | |
| Protein | 3 g | | |
| Vitamin A | 9% | Vitamin C | N/A |
| Calcium | 8% | Iron | 2% |
| * Percent Daily Values based on 2000 calorie diet. | | | |